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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 FREDDIE WILLIAMS,

No. CIV.S-05-0658 DAD

12 Plaintiff,

13 v.

ORDER

14 JO ANNE B. BARNHART,  
15 Commissioner of Social  
Security,

16 Defendant.  
17 \_\_\_\_\_/

18 This social security action was submitted to the court,  
19 without oral argument, for ruling on plaintiff's motion for summary  
20 judgment and defendant's cross-motion for summary judgment. For the  
21 reasons explained below, the decision of the Commissioner of Social  
22 Security ("Commissioner") is affirmed.

23 **PROCEDURAL BACKGROUND**

24 Plaintiff Freddie L. Williams applied for Supplemental  
25 Security Income under Title XVI of the Social Security Act (the  
26 "Act"). (Transcript (Tr.) at 46-49.) The Commissioner denied

1 plaintiff's application initially and on reconsideration. (Tr. at  
2 29-32, 37-41.) Pursuant to plaintiff's request, a hearing was held  
3 before an administrative law judge ("ALJ") on November 8, 2004, at  
4 which time plaintiff was represented by counsel. (Tr. at 360-73.)  
5 In a decision issued on November 22, 2004, the ALJ determined that  
6 plaintiff was not disabled. (Tr. at 12-20.) The ALJ entered the  
7 following findings:

- 8 1. The claimant has not engaged in  
9 substantial gainful activity since  
January 4, 2002.
- 10 2. The medical evidence establishes that  
11 the claimant has severe diabetes  
12 mellitus, hypertension, joint pain and  
13 Hepatitis C, but that he does not have  
14 an impairment or combination of  
15 impairments listed in, or medically  
16 equal to one listed in Appendix 1,  
17 Subpart P, Regulations No. 4. The  
18 claimant does not have a severe mental  
19 impairment or substance abuse disorder.
- 20 3. The claimant's testimony is not  
21 substantially credible for the reasons  
22 stated in the body of this decision.
- 23 4. The claimant has the residual  
24 functional capacity to perform the  
25 physical exertion requirements of work  
except for frequently lifting more than  
26 25 pounds and occasionally lifting more  
than 50 pounds. There are no non-  
exertional limitations (20 CFR §  
416.945).
5. The claimant does not have any past  
relevant work.
6. The claimant has the residual  
functional capacity to perform the full  
range of medium work (20 CFR §  
416.967).

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- 1           7.    The claimant is 53-years-old, which is  
2                defined as a closely approaching  
3                advanced age individual (20 CFR §  
4                416.963).
- 5           8.    The claimant possesses a limited  
6                education (20 CFR § 416.964).
- 7           9.    In view of the claimant's age and  
8                residual functional capacity, the issue  
9                of transferability of work skills is  
10              not material.
- 11          10.   Section 416.969 of Regulations No. 16  
12              and Rule 203.18, Table No. 3 of  
13              Appendix 2, Subpart P, Regulations No.  
14              4, direct a conclusion that,  
15              considering the claimant's residual  
16              functional capacity, age, education and  
17              work experience, he is not disabled.
- 18          11.   The claimant was not under a  
19              "disability," as defined in the Social  
20              Security Act, at any time through the  
21              date of this decision (20 CFR §  
22              416.920(f)).

23 (Tr. at 19.) The Appeals Council declined review of the ALJ's  
24 decision on February 4, 2005. (Tr. at 4-6.) Plaintiff then sought  
25 judicial review, pursuant to 42 U.S.C. § 405(g), by filing the  
26 complaint in this action on April 4, 2005.

#### LEGAL STANDARD

The Commissioner's decision that a claimant is not disabled  
will be upheld if the findings of fact are supported by substantial  
evidence and the proper legal standards were applied. Schneider v.  
Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 973 (9th Cir. 2000);  
Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.  
1999). The findings of the Commissioner as to any fact, if supported  
by substantial evidence, are conclusive. See Miller v. Heckler, 770

1 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is such relevant  
2 evidence as a reasonable mind might accept as adequate to support a  
3 conclusion. Morgan, 169 F.3d at 599; Jones v. Heckler, 760 F.2d 993,  
4 995 (9th Cir. 1985) (citing Richardson v. Perales, 402 U.S. 389, 401  
5 (1971)); see also Connett v. Barnhart, 340 F.3d 871, 873 (9th Cir.  
6 2003) (Substantial evidence "is more than a mere scintilla but not  
7 necessarily a preponderance.")

8 A reviewing court must consider the record as a whole,  
9 weighing both the evidence that supports and the evidence that  
10 detracts from the ALJ's conclusion. See Jones, 760 F.2d at 995. The  
11 court may not affirm the ALJ's decision simply by isolating a  
12 specific quantum of supporting evidence. Id.; see also Hammock v.  
13 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence  
14 supports the administrative findings, or if there is conflicting  
15 evidence supporting a finding of either disability or nondisability,  
16 the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d  
17 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an  
18 improper legal standard was applied in weighing the evidence, see  
19 Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

20 In determining whether or not a claimant is disabled, the  
21 ALJ should apply the five-step sequential evaluation process  
22 established under Title 20 of the Code of Federal Regulations,  
23 Sections 404.1520 and 416.920. See Bowen v. Yuckert, 482 U.S. 137,  
24 140-42 (1987). This five-step process can be summarized as follows:

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1 Step one: Is the claimant engaging in substantial  
2 gainful activity? If so, the claimant is found  
not disabled. If not, proceed to step two.

3 Step two: Does the claimant have a "severe"  
4 impairment? If so, proceed to step three. If  
not, then a finding of not disabled is  
5 appropriate.

6 Step three: Does the claimant's impairment or  
combination of impairments meet or equal an  
7 impairment listed in 20 C.F.R., Pt. 404, Subpt.  
P, App. 1? If so, the claimant is conclusively  
8 presumed disabled. If not, proceed to step four.

9 Step four: Is the claimant capable of performing  
his past work? If so, the claimant is not  
10 disabled. If not, proceed to step five.

11 Step five: Does the claimant have the residual  
functional capacity to perform any other work?  
12 If so, the claimant is not disabled. If not, the  
claimant is disabled.

13 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995). The claimant  
14 bears the burden of proof in the first four steps of the sequential  
15 evaluation process. Yuckert, 482 U.S. at 146 n.5. The Commissioner  
16 bears the burden if the sequential evaluation proceeds to step five.  
17 Id.; Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

#### 18 APPLICATION

19 Plaintiff advances two arguments in his motion for summary  
20 judgment. First, plaintiff asserts that the ALJ erred in his  
21 treatment of certain opinions rendered regarding plaintiff's alleged  
22 mental impairment. Those include the opinions of Barry N. Finkel,  
23 Ph.D., a psychologist who examined plaintiff on December 14, 2000  
24 (Tr. at 354-59) and Carl W. Wolf, M.D., an internal medicine  
25 consultant who examined plaintiff on November 8, 2002 (Tr. at 180-  
26 82). Second, plaintiff argues that the ALJ erred in not taking

1 testimony from a vocational expert at the administrative hearing.

2 The court addresses plaintiff's arguments below.

3       As noted, plaintiff argues that the ALJ erred in his  
4 treatment of the opinions of Dr. Finkel and Dr. Wolf. As a general  
5 matter, where the opinion of an examining physician is uncontradicted  
6 by the opinion of another doctor, the ALJ must provide "clear and  
7 convincing" reasons for rejecting it. Lester, 81 F.3d at 830. See  
8 also Batson v. Commissioner, 359 F.3d 1190, 1195 (9th Cir. 2004);  
9 Where an examining physician's opinion is contradicted by that of  
10 another doctor, it can be rejected upon a showing of "specific and  
11 legitimate reasons that are supported by substantial evidence in the  
12 record." Id. See also Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th  
13 Cir. 2005).

14       With respect to Dr. Finkel, the court agrees with plaintiff  
15 that the ALJ did not mention that physician's opinion. However, to  
16 the extent the ALJ erred by that omission, any such error was  
17 harmless. See Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir.  
18 1990); Booz v. Sec'y of Health & Human Servs., 734 F.2d 1378, 1380  
19 (9th Cir. 1984). Dr. Finkel evaluated plaintiff on December 14,  
20 2000, in connection with an earlier application for benefits. (Tr.  
21 at 354-59.) The parties agree that the earlier application, filed in  
22 1999, was litigated at the administrative level up through the  
23 Appeals Council. (Tr. at 225-63.) The Commissioner's decision that  
24 plaintiff was not disabled, made in response to that earlier  
25 application, became final on February 22, 2002. (Tr. at 225-26.)  
26 Judicial review of that decision was not sought by plaintiff. (Id.)

1 That decision therefore is final and binding and is res judicata as  
2 to plaintiff's nondisability prior to February 22, 2002. 42 U.S.C. §  
3 405(h); Miller, 770 F.2d at 848 (finding unappealed decision of ALJ  
4 final and binding on both claimant and Secretary under res judicata).  
5 In light of that determination, Dr. Finkel's opinion of December 14,  
6 2000, is irrelevant with respect to the instant application. Miller,  
7 770 F.2d at 848 ("In light of the prior determination that Miller was  
8 not disabled as of January 19, 1979, medical reports based on  
9 observations made prior to January 20, 1979, are irrelevant.").  
10 Therefore, the ALJ's omission of any reference to that opinion was  
11 harmless.

12 Dr. Wolf examined plaintiff on November 8, 2002, during the  
13 relevant period. (Tr. at 180-82.) However, Dr. Wolf is an internal  
14 medicine specialist and he evaluated plaintiff's chief complaints of  
15 diabetes and hypertension. (Tr. at 180.) Based on plaintiff's  
16 anxiousness, agitation and suspicious thoughts during the  
17 examination, Dr. Wolf diagnoses included "probable psychosis with  
18 paranoid ideation" but, presumably because he had no expertise in the  
19 relevant field, he assessed no limitations in connection with that  
20 suspected condition. (Tr. at 182.) Rather, Dr. Wolf noted that  
21 plaintiff had an upcoming psychiatric examination and deferred to the  
22 evaluation to be conducted at that examination. (Tr. at 180.) In  
23 this regard, Dr. Wolf concluded in his report as follows: "The  
24 claimant does appear to be severely impaired by his psychological  
25 status and this will be further evaluated." (Tr. at 182.) Because  
26 Dr. Wolf has no mental health expertise and assessed no specific

1 limitations associated with plaintiff's "probable" psychosis, his  
2 report was obviously of limited value to the ALJ with respect to  
3 plaintiff's claim of a mental impairment. Accordingly, if the ALJ  
4 can be said to have erred at all in failing to discuss Dr. Wolf's  
5 report with respect to any claim of mental impairment, that error was  
6 also harmless.<sup>1</sup>

7           Finally, one examining physician and two nonexamining  
8 physicians evaluated plaintiff's claim of mental impairment in  
9 particular and during the relevant period. (Tr. at 183-87, 190-203,  
10 206-19.) The opinions of those physicians constitute substantial  
11 evidence supporting the ALJ's determination that plaintiff suffers  
12 from no significant limitations with respect to any mental  
13 impairment. See 20 C.F.R. §§ 404.1521(a), 416.921(a) ("An impairment  
14 or combination of impairments is not severe if it does not  
15 significantly limit your physical or mental ability to do basic work  
16 activities."). Indeed, there was no discussion of any mental  
17 limitations of any kind at the November 8, 2004, administrative  
18 hearing at which plaintiff was represented by counsel. (Tr. at 360-  
19 73.)

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25 <sup>1</sup> Although the ALJ did not identify Dr. Wolf by name, the ALJ  
26 did cite Dr. Wolf's report by exhibit number several times in his  
decision in the context of addressing plaintiff's physical  
impairments. (Tr. at 17-18.)

1 For these reasons, plaintiff's argument that the ALJ erred  
2 in his treatment of the opinions of Dr. Finkel and Dr. Wolf regarding  
3 plaintiff's alleged mental impairment is rejected.<sup>2</sup>

4 Plaintiff's other argument is that the ALJ should have  
5 taken testimony from a vocational expert at the administrative  
6 hearing. At step five of the sequential evaluation, the Commissioner  
7 can satisfy the burden of showing that the claimant can perform other  
8 types of work in the national economy, given the claimant's age,  
9 education, and work experience, by either: (1) applying the medical-  
10 vocational guidelines ("grids") in appropriate circumstances; or (2)  
11 taking the testimony of a vocational expert. See Polny v. Bowen, 864  
12 F.2d 661, 663 (9th Cir. 1988); Burkhart, 856 F.2d at 1340 (citing  
13 Desrosiers v. Sec'y of Health & Human Servs., 846 F.2d 573, 578 (9th  
14 Cir. 1988) (Pregerson, J., concurring)). Testimony from a vocational  
15 expert usually is required when there are significant nonexertional  
16 limitations. See Burkhart, 856 F.2d at 1340; Desrosiers, 846 F.2d at  
17 577. Plaintiff argues that such is the case here. However, that  
18 argument is in turn premised on plaintiff's first claim regarding the  
19 ALJ's treatment of Dr. Finkel and Dr. Wolf's opinion, which the court  
20 has rejected. The ALJ having committed no reversible error with  
21 respect to his treatment of the treating physicians' opinions,

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23 <sup>2</sup> Plaintiff very briefly asserts in his motion that the ALJ  
24 should have obtained additional, more recent mental evaluations  
25 regarding plaintiff. That argument is rejected. There was no  
26 conflict, ambiguity or inadequacy in the record that required further  
development of the record. See Mayes v. Massanari, 276 F.3d 453,  
459-60 (9th Cir. 2001) ("An ALJ's duty to develop the record further  
is triggered only when there is ambiguous evidence or when the record  
is inadequate to allow for proper evaluation of the evidence.")

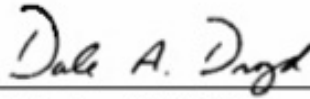
1 plaintiff's argument regarding the need for vocational expert  
2 testimony also fails. Substantial evidence supports the  
3 determination that plaintiff has no significant nonexertional  
4 limitations arising out of any mental impairment. Taking testimony  
5 from a vocational expert was not necessary under the circumstances.

6 **CONCLUSION**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion for summary judgment is denied;  
9 2. Defendant's cross-motion for summary judgment is  
10 granted; and  
11 3. The decision of the Commissioner of Social Security is  
12 affirmed.

13 DATED: September 19, 2006.

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15 DALE A. DROZD  
16 UNITED STATES MAGISTRATE JUDGE

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